

REMARKS/ARGUMENTS

Applicants respectfully submit, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. § 1.114.

Claims 1-10, 12-18, and 30-36 are pending. Claims 1-10 and 34-36 have been withdrawn. Claims 11 and 19-29 have been cancelled. Claims 12-24 and 30-32 have been rejected. Claim 33 has been objected to.

Claim Rejections 35 U.S.C. § 102(b)

Claims 12-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,308,357 to Lichtman ("Lichtman '357").

Lichtman '357 discloses a surgical instrument, shown in Fig. 7, including hollow shaft 2, solid shaft or rod 4, and jaw assembly or head 6 (Figs. 1 and 2). In order to grip a piece of tissue 80, as shown in Fig. 7, jaws 14A, 14B are positioned with tissue 80 therebetween. Then, by actuating handles 8, shaft 2 and metal ferrule 18, which are attached thereto, are advanced in the directions of jaws 14A, 14B, to cause jaws 14A, 14B to be compressed toward one another and grip tissue 80.

Applicants respectfully submit that amended independent Claim 15 is not anticipated by Lichtman '357, as Lichtman '357 fails to disclose each and every limitation called for in amended independent Claim 15. Specifically, amended independent Claim 15 calls for an instrument for gripping a tibial keel component of a modular keel and tray assembly, the keel component having a first end and a second end, the instrument including, *inter alia*, a handle, a clamp having a top surface and an opposing bottom surface, the clamp having a first position in which the clamp applies a clamping force to the keel component to lock the keel component to the instrument and a second position, and a cover, with the clamp in the first position in which the clamp applies a clamping force to the keel component and with the keel component extending from the bottom surface of the clamp the cover is moveable to selectively position the cover over a first end of the keel component to shield the first end of the keel component from contamination while the second end of the keel component is engageable with a tibial bone.

In forming the rejection of amended independent Claim 15, the Examiner relies on jaws 14A, 14B as forming the clamp called for in amended independent Claim 15. Additionally, the Examiner relies on metal ferrule 18, which is secured to shaft 2 to provide

additional rigidity to shaft 2, as being the cover called for in amended independent Claim 15. However, with jaws 14A, 14B in a first position in which jaws 14A, 14B provide a clamping force to a keel component to lock the keel component to the instrument, metal ferrule 18 and/or shaft 2 of the device of Lichtman '357 *are not moveable* to selectively position the metal ferrule 18 and/or shaft 2 over a first end of the keel component to shield the first end of the keel component from contamination while the second end of the keel component extends from the bottom surface of jaws 14A, 14B and is engageable with a tibial bone, as called for in amended independent Claim 15.

Specifically, in order to cause compression of jaws 14A, 14B to lock jaws 14A, 14B to a keel component, shaft 2 is advanced in the direction of jaws 14A, 14B to resiliently deform jaws 14A, 14B toward one another. Assuming, *arguendo*, that jaws 14A, 14B are capable of being advanced close enough to one another to allow shaft 2 and ferrule 18 to be positioned over a first end of a keel component, the second end of the keel component is also covered by metal ferrule 18 and/or shaft 2 and is not engageable with a tibial bone, as called for in amended independent Claim 15. Thus, with jaws 14A, 14B locked to a keel component, metal ferrule 18 and/or shaft 2 of the device of Lichtman '357 *are not moveable* to selectively position the metal ferrule 18 and/or shaft 2 over a first end of the keel component to shield the first end of the keel component from contamination while the second end of the keel component extends from the bottom surface of jaws 14A, 14B and is engageable with a tibial bone.

For at least the foregoing reasons, Applicants respectfully submit that Claim 15, as well as Claims 12-14 and 16-18 which depend therefrom, are not anticipated by Lichtman '357.

Claims 30-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,159,217 to Robie et al. ("Robie '217").

Robie '217 discloses, as shown in Fig. 1, trochlear clamp 100, having upper arm 10 and lower arm 25. Upper arm 10 includes curved proximal end 20 and lower arm 25 includes curved proximal end 30. Arms 10, 25 are pivotable relative to one another about pin 40. Referring to Fig. 12, Robie '217 also discloses an assembled device 500 formed from clamp slider 900 and cutting guide 600.

Applicants respectfully submit that amended independent Claim 30, as well as Claims 31 and 32 which depend therefrom, are not anticipated by Robie '217. Specifically, amended independent Claim 30 calls for a tibial keel holder and tibial tray holder combination, the tibial keel holder being engageable with the tibial keel component of a modular tibial implant, the tibial keel component having a first end and a second end, and the tibial tray holder being engageable with a tibial tray component of a modular tibial implant, the tibial keel component and tibial tray component forming a male/female junction between them, the combination including, *inter alia*, a tibial keel holder including a first handle, a clamp, and a cover, the clamp being connected to the handle and having a top surface and an opposing bottom surface, the clamp having a first position in which the clamp applies a clamping force to the tibial keel component to lock the tibial keel component to the tibial holder and a second position, with the clamp in the first position in which the clamp applies a clamping force to the keel and with the second end of the tibial keel component extending from the bottom surface of the clamp the cover is moveable to selectively position the cover over the first end of the tibial keel component to shield the first end of the tibial keel component from contamination while the second end of the tibial keel component extends from the bottom surface of the clamp and is engageable with a tibial bone; and a tibial tray holder including a second handle and an attachment mechanism for connecting the tibial tray holder to the tibial tray component in a reproducible known orientation, the first and second handles forming a predetermined angle between them to give a visual indication of tray-to-keel rotational alignment.

In forming the rejection, the Examiner relies on trochlear clamp 100 as being the tibial keel holder called for in amended independent Claim 30. Additionally, the Examiner relies on assembled device 500 as forming the cover of the tibial keel holder. However, the Examiner fails to identify the tibial keel holder called for in amended independent Claim 30. In view of the foregoing, Applicants respectfully submit that Robie '217 fails to disclose each and every limitation of amended independent Claim 30.

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claim 30, as well as Claims 31 and 32 which depend therefrom, are not anticipated by Robie 217.

Application Serial No. 10/682,101
Amendment After Final dated October 7, 2009
Reply to Final Office Action dated July 7, 2009

Conclusion

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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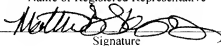
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October 7, 2009

Date